IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

THURSDAY, THE 23RD NOVEMBER 2006 / 2ND AGRAHAYANA 1928

CRL.A.No. 1143 of 2006(A)

SC.511/2000 of ADDL.SESSIONS COURT (ADHOC)-IV, TRIVANDRUM
CP.32/2000 of JUDL. MAGISTRATE OF FIRST CLASS COURT-I, ATTINGAL

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APPELLANT:

SHERIN, S/O. APPU,
C.NO.28, CENTRAL PRISON,
TRIVANDRUM.

BY ADV. ADV.VINITHA PRASANNAN(STATE BRIEF)

RESPONDENTS:

STATE OF KERALA,
REPRESENTED BY A PUBLIC PROSECUTOR.

BY PUBLIC PROSECUTOR SRI.C.M.NAZAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 23/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.Thankappan, J.

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Crl. A. No. 1143 of 2006

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Dated this the 23rd day of November, 2006

JUDMENT

The appellant, accused in S.C.No.511/2000 on the file of the Court of the Addl. Sessions Judge, Fast Track (Adhoc) No.IV, Thiruvananthapuram, was charge-sheeted for the offences punishable under section 8(1) and (2) of the Abkari Act. The prosecution case against the appellant is that on 15-1-1999 while PW3 Preventive Officer and party were on patrol duty, they saw the appellant walking along the Chempumkuzhy Mukolakkal road holding a 5 litre plastic can and on verification it was found that the can contained full of contraband arrack. PW3 arrested him after preparing the seizure mahazar. PW5 who conducted the investigation laid the final charge against the appellant. To prove the charge against the appellant, the prosecution examined PW1 to PW5 and Exts.P1 to P7 were marked. Material objects MO1 was also marked. After closing the evidence, the appellant was questioned under seciton 313 of Cr.P.C. He denied the circumstances and stated that he was falsely implicated in the case. Relying on the evidence adduced by the prosecution, the trial court found that the appellant was guilty of the offences punishable under sections 8(1) and (2) of the the Abkari Act and

he was convicted thereunder and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.1,00,000/- and in default of payment of fine to undergo rigorous imprisonment for a further period of three months. The above conviction and sentence are under challenge in this appeal.

2. PW1 and PW2 are the independent witnesses to the occurrence. PW3 who detected the offence gave evidence that on 15-1-1999 while he was on patrol duty along with patrol party he saw the appellant walking along the Chempumkuzhy Mukkolakkal road holding a plastic can and on verification of the can it was found full of contraband arrack. He stated that he prepared Ext.P1 seizure mahazar in the presence of independent witnesses. He also stated that the appellant along with the article and records were produced before PW5 Excise Inspector on the same day. PW4 stated that he prepared Ext.P4 to P6. PW5 who conducted the investiation of the case stated that he recorded the statement of the witnesses and conducted the investigation of the case and laid the charge. Ext.P7 certificate of the chemical analyst would show that the sample of the liquid contained 34.5% ethyl alcohol. As PW1 and PW2 stated that they did not witness the incident, they were

declared hostile to the prosecution. The contention of the appellant that the procedures contemplated under the provisions of the Abkari Act and the Kerala Excise Manual have not been complied with by PW3 and PW4.

3. The question whether or not PW3 and PW4, who prepared the documents with regard to the seizure of the contraband article and taking of the sample, have complied with the procedure prescribed under the provisions of the Abkari Act as well as the Kerala Excise Manual?

4.The case of the appellant is that he was falsely implicated in the case due to the enmity of an abkari contractor. The evidence of PW3 would show that he found the appellant holding a can and on verification, it contained illicit arrack. He prepared Exts.P1 to P3 and produced the appellant along with the article and records before PW5 on 15-1-1999 itself. PW4 stated that he registered the crime and prepared Ext.P4 occurrence report, Ext.P5 list of property and Ext.P6 requisition for sending the sample for chemical analysis. PW5 who conducted the investigation of the case laid charge before the court. Ext.P7 chemical analysis report would show that the sample contained 34.5% ethyl alcohol. Hence, the

contention of the appellant that the procedure has not been complied with by the official witnesses is not sustainable.

5. The next question to be considered, on the basis of the argument of the learned counsel for the appellant, is whether the sentence awarded against the appellant is excessive or not? The learned counsel for the appellant submits that the appellant is below 25 years of age and he had already undergone one year imprisonment. The above question was considered by the trial court and found that the dealing in illicit arrack was a serious offence. However, taking into consideration of the fact that there is no evidence to show that any attempt is made by the appellant to sell the arrack, that he is undergoing imprisonment for more than one year and that he is not in a position to defend the case by engaging a counsel, this Court is of the view that the period undergone by the appellant will meet the ends of justice.

6. In the above circumstances, the conviction entered against the appellant under sections 8(1) and (2) of the Abkari Act is confirmed and the sentence awarded by the court below is reduced to the imprisonment which the appellant has already suffered.

Hence, the appellant may be released forthwith unless required in any other case.

The appeal is allowed as above.

K. Thankappan,
Judge.

K. Thankappan,J.

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Judgment

23-11-2006